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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,082	11/14/2001	Howard D. Kidorf	1009 CIP	8155

7590 10/19/2004

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EXAMINER

LAMARRE, GUY J

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,082

Applicant(s)

KIDORF ET AL.

Examiner

Guy J. Lamarre, P.E.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/03/01 & 8/27/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

0. Pursuant to 35 USC 131, **Claims 1-43** are presented for examination. The Examiner has considered the IDS's of 12/03/01 and 8/27/2002.

Specification

1. Updated information is required for 'Related Application Section' at page 1.

Claim Objections

2. Claim 27 is objected to because 1-N yields negative values for $N > 1$. There is improper Markush language in the claims in passim, e.g., **Claims 37, 42**. Appropriate correction is required.

Double Patenting (non-statutory)

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3.1 Instant claimed invention is not patentably distinct from published claimed invention of *US 20020166091 A1* or *US-PAT-NO. 6622277* although the conflicting claims are not identical.

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3.1.1a For example: Claim(s) 1, 13, 15 of *US 20020166091 A1* contain(s) every element of **claim(s) 1, 17, 33, 38, 43** of the instant application and as such anticipate (s) **such claim(s)** of the instant application.

3.1.1.b For example: Claim(s) 6, 14 of US-PAT-NO. 6622277 contain(s) every element of **claim(s) 1, 17, 33, 38, 43** of the instant application and as such anticipate **such claim(s)** of the instant application.

3.1.2 “A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ **ELI LILLY AND COMPANY v BARR LABORATORIES, INC.**, United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

3.2 This is a provisional obviousness-type double patenting.

Claim Rejections - 35 USC ' 102

3.3 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3.3.1 Claims 1-43 are rejected under 35 U.S.C. 102 (e) as being anticipated by **Tong et al.** (US Pat. # 6,298,461, filed: 25 Jan. 1999) and **Kobayashi et al.** (US Pat. # 6,029,264, filed: 28 Apr. 1997).

Tong et al. discloses all the limitations of **Claims 1-43** in Figs. 1-3 and related description.

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Fig. 1 (below) depicts a communications stage wherein coding means employs plural coding levels not limited exclusively to Reed-Solomon code (numeral 10) and an inner parallel concatenated convolutional code (PCCC) or turbo code (numeral 11), parity generation means (P1-P2), interleaving means (numeral 16), coding gain computation means via puncturing means (as seen in Fig. 1 at P), means form/pack data frames or packets or blocks (x0-x2), e.g., in Abstract: an 'encoder for a wideband CDMA communications system comprises an outer Reed-Solomon code encoder and an inner parallel concatenated convolutional code (PCCC) or turbo code encoder. An iterative PCCC decoder, for decoding the inner code, includes summing functions in forward and feedback paths for producing extrinsic information to enhance soft decoding decisions by first and second decoders in successive decoding iterations. An outer code decoder connected following the PCCC decoder also can provide serial feedback information for enhancing iterative decisions by the PCCC decoder.' Therefore, Tong et al. anticipates Claims 1-43.

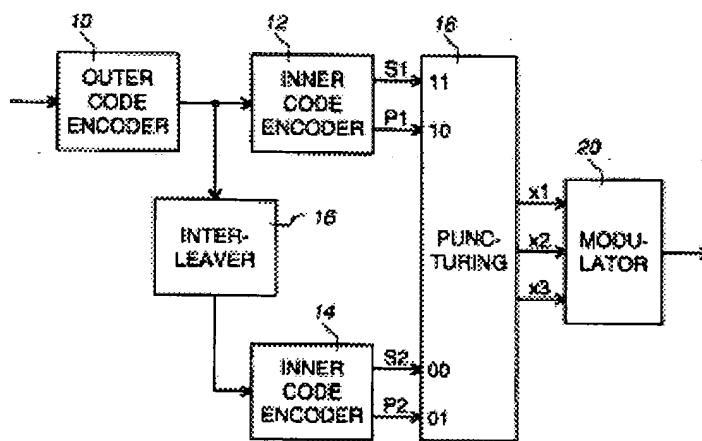
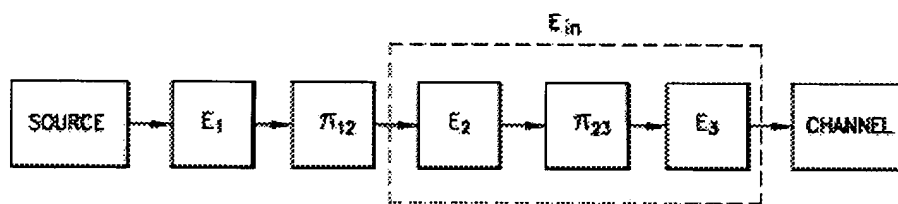


Fig. 1

Kobayashi's Figs. 1-14, e.g., Fig. 12A (below), and related description anticipate Claims 1-43 because Figs. 1-14 teach the claimed plural level coding scheme (E1-E3, E1...E3 being of differing scheme, e.g., passage at col. 1 line 50, or col. 11 line 20, or col. 12 lines 5-55 et seq.,

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specifies E1 and E2 as RS and/ Turbo code (col. 12 lines 5 & 53) comprising interleaving means (Fig. 14A), including bit/byte interleaving, data packet/frame/block processing means, e.g., at col. 7 line 45 et seq., data transfer means over a channel (Fig. 12A: CHANNEL) or long haul transmission system (Examiner notes that the prior art does not have to show intended use. 'If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)."

**FIG.12A****CONCLUSION**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4.1 Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

or faxed to: (703) 872-9306 for all formal communications.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guy J. Lamarre, P.E., whose telephone number is (703) 305-0755. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached on (703) 305-9595.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Guy J. Lamarre, P.E
Primary Examiner
10/17/04
